



**GOLDBERG SEGALLA** <sup>LLP</sup>

*Attorneys at Law*

William G. Kelly  
PARTNER  
Direct Dial 914.798.5475  
wkelly@goldbergsegalla.com

11 Martine Avenue, Suite 750  
White Plains, New York 10606  
914.798.5400 FAX 914.798.5401  
www.goldbergsegalla.com

December 9, 2010

**VIA HAND DELIVERY**

Honorable Denise L. Cote, USDJ  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1040  
New York, NY 10007-1312

USDC SDNY
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Re: Travelers v. Dayton Superior, et al.  
07-CV-6915 (DLC)  
GS File No.: 15180.0001

**MEMO ENDORSED**

Dear Judge Cote:

We are counsel to the fourth-party defendant/fifth-party plaintiff, Dayton Superior Corporation, in the above referenced action. In accordance with Federal Rule 26(a)(2), on April 22, 2009, our office disclosed Dr. Michele Cyr as the only engineering expert retained on behalf of Dayton Superior Corporation, in addition to disclosing the report she authored. Dr. Cyr's deposition was taken in January 2010.

Since her deposition, Dr. Cyr changed her place of employment, leaving her position as Senior Engineer at Exponent, Inc., to take a new position as Senior Project Director at Thornton Thomasetti. This week, while communicating with Dr. Cyr regarding the timing of the trial, scheduled to proceed on February 14, 2011, Dr. Cyr informed our office that her current employer, Thornton Thomasetti, performs work for Kohn Pedersen Fox Associates, P.C., ("KPF"), the architect who designed the Baruch College building at issue in this litigation, and a named defendant in this action. Because of the relationship her employer has with KPF, Dr. Cyr has informed us that she is unable to testify as an expert on behalf of Dayton Superior Corporation in this matter.

In an attempt to quickly remedy this situation, our office contacted Michael Drerup, an engineer also in the employ of Exponent, Inc., who assisted Dr. Cyr in the expert evaluation she performed on the premises of the Baruch College building, located at 24<sup>th</sup> Street and Lexington Avenue in New York City. Mr. Drerup informed our office that he contributed to the drafting of the expert report generated by Dr. Cyr in conjunction with her analysis and testing of the samples

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taken from the Baruch College building, located at 24<sup>th</sup> Street and Lexington Avenue, and that his opinions about this matter differ little from those set forth in the report signed by Dr. Cyr.

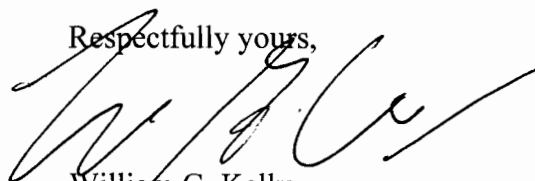
Because of the conflict recently disclosed to us by Dr. Cyr, and the first-hand information possessed by Mr. Drerup with regard to this matter, we respectfully request your consent to utilize Mr. Michael Drerup as Dayton Superior Corporation's engineering expert in this matter,

Mr. Drerup is leaving for India on December 8, 2010, and will return at the end of December 2010. Should Your Honor authorize this change to the expert witness designated on behalf of Dayton Superior Corporation, we will produce Mr. Drerup's expert report in the first week of January 2011, and we will produce him for deposition during the second week of January 2011.

Counsel for the plaintiff and all defendants have been advised of this change in identification of the expert witness retained on behalf of Dayton Superior Corporation, and are also aware of our intent to seek Your Honor's authorization to permit the substitution of Mr. Drerup.

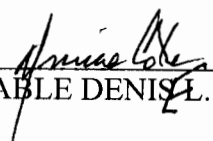
Thank you for your consideration of this request. Should you require any additional information, I can be reached via email at [wkelly@goldbergsegalla.com](mailto:wkelly@goldbergsegalla.com), or via telephone at (914) 798- 5475.

Respectfully yours,



William G. Kelly

SO ORDERED:



HONORABLE DENISE L. COTE, USDJ

WGK/mrp

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cc: JoAnne M. Bonacci, Esq.  
DREIFUSS BONACCI & PARKER, LLP  
26 Columbia Turnpike  
North Entrance  
Florham Park, New Jersey 07932

Jeremy D. Platek  
O'CONNOR REDD, LLP  
200 Mamaroneck Avenue  
White Plains, New York 10601

David Abramovitz, Esq.  
Zeynel Karcioglu, Esq.  
801 Second Avenue, 17th Floor  
New York, New York 10017

Robert Rigliosi, Esq.  
SEGAL McCAMBRIDGE SINGER & MAHONEY  
830 Third Avenue, Suite 400  
New York, NY 10022

Vincent J. Zichello, Esq.  
ZICHELO & McINTYRE, LLP  
The Graybar Building  
420 Lexington Avenue  
New York, New York 10170

Robert Mark Wasko, Esq.  
TORRE, LENTZ, GAMMELL, GARY & RITTMASER, LLP  
226 West 26<sup>th</sup> Street, 8<sup>th</sup> Floor  
New York, New York 10001-6785

Henry G. Morgan, Esq.  
MORGAN, MELHUISE, MONAGHAN,  
ARVIDSON, ARBUTYN & LISOWSKI  
651 West Mt. Pleasant Avenue, Suite 200  
Livingston, New Jersey 07039

S. Dwight Stephens, Esq.  
MELITO & ADOLFSSEN, P.C.  
233 Broadway  
New York, New York 10279

Timothy B. Froessel, Esq.  
HOLLAND & KNIGHT, LLP  
195 Broadway  
New York, New York 10007

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Page 4

Tricia Wishert, Esq.  
RIKER, DANZIG, SCHERER, HYLAND & PERRETTI, LLP  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, New Jersey 07960

Martin Schwartzberg, Esq.  
L'ABBATE, BALKAN, COLAVITA & CONTINI, LLP  
1001 Franklin Avenue  
Garden City, New York 11530

Stephen Schreckinger, Esq.  
GOGICK, BYRNE & O'NEILL, LLP  
11 Broadway, Suite 1560  
New York, New York 10004  
Terrence O'Connor, Esq.  
KALK & ROSENFELD, P.C.  
1470 Bruckner Blvd.  
Bronx, New York 10473

Henry G. Morgan  
Morgan, Melhuish, Monaghan, Arviidson, Abrutyn & Lisowski  
39 Broadway, 35th Floor  
New York, NY 10006

Louis B. Antonacci  
Holland & Knight LLP (DC)  
2099 Pennsylvania Avenue, N.W.  
Washington, DC 20006